IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WA.No. 1226 of 2007()

AGAINST THE JUDGEMENT IN OP.30288/2002 Dated 07/02/2007

APPELLANT/ PETITIONER:

K.T. GEORGE @ JOY, AGED 57 YEARS,
S/O. K.L.THOMAS KURISSINGAL HOUSE, VADUTHALA P.O.,
KOCHI-23.

BY ADV. SRI.GEORGE THOMAS (MEVADA)

RESPONDENTS/ RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. ADDL.SECRETARY TO GOVERNMENT,
LABOUR AND REHABILITATION (S) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SHRI M.R SABU.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1226 OF 2007

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Dated this the 7th June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Questioning the correctness or otherwise of the judgment delivered by the learned single Judge in O.P. 30288 of 2002 dated 7th February, 2007, the petitioner in the Original Petition has filed this appeal.

2. Aggrieved by the orders passed by the Executive Officer, Kerala Motor Transport Worker's Welfare Fund Board, the petitioner had filed an appeal as provided under section 8(5) of the Kerala Motor Transport Workers Welfare Fund Act before the State Government . Along with the appeal, the petitioner had also produced the affidavit filed by the workmen, wherein they have stated that at no point of time they had worked with the petitioner. The appellate authority without adverting to the affidavit so filed by the workmen, had proceeded to reject the appeal filed by the petitioner. Aggrieved by the said order, the petitioner was before this court in O.P. No. 30288 of 2002.

3. The learned single Judge without noticing the aforesaid aspect of the matter had rejected the Original Petition. That is how, the petitioner is before us

in this Writ Appeal.

4. Statutory remedies are provided under the Kerala Motor Transport Workers Welfare Fund Act. The appellate authority is not only a fact finding authority but also an officer who is expected to answer the questions of law raised before him. In the instant case, along with the appeal, the petitioner had also produced the affidavit filed by the workmen which would indicate that at no point of time, they had worked with the petitioner . This is a material document and that documentary evidence should have been taken note of by the first appellate authority before holding that the petitioner is liable for contribution under the provisions of the Kerala Motor Transport Workers Welfare Fund Act . Since that is not done by the first appellate authority, in our opinion, the same is arbitrary, illegal and improper and therefore, we cannot sustain that order. Therefore the following:

O R D E R

i) Writ Appeal is disposed of.

ii) Judgment dated 7th February, 2007 delivered by the learned single Judge in O.P. 30288 of 2002 is set aside.

iii) The matter is remitted back to the first appellate authority to re-consider the appeal filed by the petitioner , with reference to the affidavit filed by

the workmen. While considering the appeal, the first appellate authority shall afford an opportunity of being heard to the petitioner .

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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